

**Remarks**

Examiner Smith is thanked for the thorough Office Action.

**In the Claims**

Independent claim 1 has been amended to include the limitation of either objected to independent claims 6 or 7.

The claims have not been otherwise amended.

**Claim Objections**

**Double Patenting**

**The Rejection of Claims 1 And 14 Under the Judicially Created Doctrine of Obviousness-Type Double Patenting as Being Unpatentable Over Claim 20 of Co-pending U.S. Application No. 10/328,512//Publication 2004/0121585 (Liu et al.)**

The rejection of claims 1 and 14 under the judicially created doctrine of Obviousness-Type Double Patenting as being unpatentable over claim 20 of co-pending

U.S. Application No. 10/328,512//Publication 2004/0121585 (Liu et al.) (the '512 Liu Application//the '585 Liu Publication) is acknowledged.

Independent claim 1 has been amended to be allowable over the '512 Liu Application//the '585 Liu Publication by incorporating the limitations of dependant, objected-to, claims 6 or 7 per the Examiner's statement of reasons for the indication of allowable subject matter at page 7 of the Office Action. This double patenting rejection is therefore moot as to amended claim 1.

Applicants urge that independent claim 14 is allowable over the '512 Liu Application//the '585 Liu Publication per the Examiner's statement of reasons for the indication of allowable subject matter at page 7 of the Office Action. That is, the Examiner states that dependent claim 13 is "objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims...the prior art [of] record neither teaches nor suggest[s] within the context of the entire claim, ... the particular dimensions of the layers and openings within the layers (see claims ... 13...)."

While claim 13 depends from independent claim 1, it includes the limitation of "wherein the opening has a width and a length and the width is greater than the length" which is indistinguishable in substance from the limitation at lines 8 and 9 of original independent claim 14, i.e. "...patterning the upper dielectric layer to

form a rectangular-shaped opening..." as the definition of a rectangle is a shape having a width (length) that is greater than its length (width) in the instant invention.

Specifically at page 8 of the specification as filed it is stated "Patterned upper dielectric layer 22 includes a rectangular shaped opening 31 with length-wise ends 90 having a: ... where the width is greater than the length." Further, the Merriam-Webster's Collegiate Dictionary, Tenth Edition, © 2001 by Merriam-Webster, Incorporated provides a definition of rectangle as "...a parallelogram all of whose angles are right angles; *esp* : one with adjacent sides of unequal length" (bolding emphasis added) (p 975, Ibid) which was as defined/selected in the specification as filed at page 8.

Thus, original independent claim 14 as filed is allowable based upon the Examiner's statement of reasons for the indication of allowable subject matter.

### Claim Rejections

#### Statement Under MPEP §706.02(l)(1) and §706.02(l)(2)

The instant application and the '512 Liu Application//the '585 Liu Publication were, at the time the instant invention was made, owned by, or subject to an obligation or assignment to, the same entity. Therefore under MPEP §706.02(l)(1) and

§706.02(l)(2), the '512 Liu Application//the '585 Liu Publication is removed as a reference for the Examiner's following 35 U.S.C. §103(a) rejections to claims 1 to 3, 10\*, 14 to 16 and 23.

**The Rejection Of Claims 1 To 3, 10, 14 To 16 And 23 Under 35 U.S.C. §102(e and f) As Anticipated By Or, In The Alternative, Under 35 U.S.C. §103(a) As Obvious Over Co-pending U.S. Application No. 10/328,512//Publication 2004/0121585 (Liu et al.)**

The rejection of claims 1 to 3, 10, 14 to 16 and 23 under 35 U.S.C. §102(e and f) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over co-pending U.S. Application No. 10/328,512//Publication 2004/0121585 (Liu et al.) (the '512 Liu Application//the '585 Liu Publication) is acknowledged.

Amended claim 1 and claims 2, 3, 10, 14 to 16 and 23 are urged to be patentable over the '512 Liu Application//the '585 Liu Publication under 35 U.S.C. §102(e and f) with the 35 U.S.C. §103(a) rejection being mooted as discussed above and in light of MPEP §706.02(l)(1) and §706.02(l)(2).

**The Provisional Rejection Of Claims 1 To 3, 13\* (sic), 14 To 16 And 23 Under 35 U.S.C. §103(a) as Being Obvious Over Co-pending Application No. 10/328,512//Publication No. US 2004/0121585 (Liu et al.) Which Has A Common Assignee With The Instant Application**

The provisional rejection of claims 1 to 3, 13\* (sic), 14 to 16 and 23 under 35 U.S.C. §103(a) as being obvious over co-pending Application No. 10/328,512//Publication No. US 2004/0121585 (Liu et al) (the '512 Liu Application//the '585 Liu Publication) which has a common assignee with the instant application is acknowledged.

\*Applicant presumes that the Examiner's above rejection of claims "1-3, 13, 14-16 and 23" (emphasis added) should read "1-3, 10, 14-16 and 23" (emphasis added) based upon the Examiner's rejections of claims. If this is not in fact the case, the Examiner is requested to so advise Applicants.

This 35 U.S.C. §103(a) rejection is mooted as discussed above in light of MPEP §706.02(l)(1) and §706.02(l)(2).

**Allowable subject matter**

The allowance of claims 26 to 34 is gratefully acknowledged.

The objection to claims 4 to 9, 11 to 13, 17 to 22, 24 and 25 as being dependent upon a rejected base claim, but allowable if rewritten in independent form

including all of the limitations of the base claim and any intervening claims is acknowledged.

The amendment of claim 1 by including the alternative limitations of objected-to claims 6 and 7 and the Applicants' argument as to the allowability of independent claim 14 as filed renders all pending claims allowable.

**Applicants' Comments Upon The Examiner's Statement Of Reasons For The**  
**Indication OF Allowable Subject Matter**

While Applicants agree with the Examiner's statement that dependent claims 7 and 20 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, the Examiner then states that claims 7 and 20 include the limitation "the upper dielectric being the same as the middle dielectric...". Claims 7 and 20 in fact each include the limitation "wherein the bottom etch stop layer, the middle etch stop layer and the upper dielectric layer are comprised of the same material." Applicants have amended independent claim 1 and have proceeded with this Response with the understanding that claims 7 and 20 "would be allowable "if rewritten in independent form including all of the limitations of the base claim and any intervening claims."


Therefore claims 1 to 34 are submitted to be allowable over the cited references and reconsideration and allowance are respectfully solicited.

**CONCLUSION**

In conclusion, reconsideration and withdrawal of the rejections are respectively requested. Allowance of all claims is requested. Issuance of the application is requested.

It is requested that the Examiner telephone Stephen G. Stanton, Esq. (#35,690) at (610) 296 - 5194 or the undersigned attorney/George Saile, Esq. (#19,572) at (845) 452 - 5863 if the Examiner has any questions or issues that may be resolved to expedite prosecution and place this Application in condition for Allowance.

Respectively submitted,

A handwritten signature in black ink, appearing to be 'SBA', is written above a horizontal line.

Stephen B. Ackerman  
Reg. No. 37,761